



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,763	05/31/2001	David Anthony Gawler	Q113396	6099
23373	7590	12/02/2009	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			ROBINSON BOYCE, AKIBA K	
			ART UNIT	PAPER NUMBER
			3628	
			NOTIFICATION DATE	DELIVERY MODE
			12/02/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com
PPROCESSING@SUGHRUE.COM
USPTO@SUGHRUE.COM

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/867,763	Applicant(s) GAWLER, DAVID ANTHONY	
	Examiner AKIBA K. ROBINSON BOYCE	Art Unit 3628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-32.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Akiba K Robinson-Boyce/
Primary Examiner, Art Unit 3628

Continuation of 11. does NOT place the application in condition for allowance because: applicant argues that while the face of the Kara publication indicates that it is a continuation of Application No. 10/082,398, in actuality it is clear that the Kara application is a continuation-in-part of the '398 application, since, according to applicant, having added new subject matter which was not included in the '398 application, and it is this subject matter that the Examiner is relying on in rejecting the claims. Applicant claims that this subject matter was first introduced in application no. 10/991,241, filed on Nov. 17, 2004, which corresponds to the Kara publication. However, examiner relies on paragraph [0125] and Fig. 8 of the Kara publication. In paragraph [0125] of the Kara publication, it describes that the user may select the configuration of postage indicia desired. Box 816 will allow the user to select a standard postage indicia such as shown in the top right hand corner of screen 80, FIG. 8. OR to select another postage indicia. Selection of the "Other" option in Box 816 allows the user to select a postage indicia that has been previously stored within the E-STAMP program or to import a new postage indicia using a "merge" command in conjunction with a word processing or graphics program coupled to the E-STAMP program. Any imported indicia may be saved within the E-STAMP program and added to a drop-down menu. Importation can be from any data base, including the portable memory, a modem and remote memory, or from a data base preloaded in the main processor's memory and operating in cooperation with the CPU. The user may then change, add a new indicia, or otherwise select which indicia is desired for a given piece of mail. The user can use any well-known graphics program for this purpose, including Macromedia's FreeHand program. Although Kara '398 does not show the same exact Fig. 8 as shown in the Kara publication, Kara '398 does teach the same subject matter as described in [0125] of the Kara publication, where Fig. 8 of the Kara publication is merely shown as an example of allowing the user to select standard postage indicia. Specifically, In Kara '398, col. 6, lines 15-26 it is shown that the user can create and modify indicia using the Macromedia freehand program, and shows that if the user wants to modify indicia, the user select indicia from an existing database, and uses it or directly modifies it, then in col. 16, lines 24-42 Kara '398 shows graphic configurations of postage indicia that correspond to the type of cards and messages generated by the card generating program will be created and imported into the E-STAMP program, which is the same subject matter shown in [0125] of the Kara publication, and therefore, examiner concludes that the Kara application is a continuation of Kara '398 and is prior art over the current application.